

**STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT**

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**Law Court Docket No. Pen-22-250**

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**KeyBank National Association  
PLAINTIFF-APPELLANT**

**v.**

**Elizabeth Keniston et al.  
DEFENDANT-APPELLEE**

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**ON APPEAL FROM THE BANGOR DISTRICT COURT  
Docket No.: BANDC-RE-2018-60**

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**REPLY BRIEF FOR THE APPELLANT**

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## **I. Introduction**

Drawing upon a familiar colloquialism, Appellee's argument "spills a lot of ink" but neglects to touch upon the operative sections of probate law applicable to this appeal and therefore Appellant shall cogently explain to this Court why Appellee's arguments fail. Appellee does nothing more than state that the district court was correct and then underwhelmingly speaks to Maine's probate code, improperly asserts trial "fact" that is not before this Court, and proceeds with a misapprehended understanding of Maine case *MTGLQ Investors, LP v. Alley*, 2017 ME 145, 166 A.3d 1002 to support its proposition. The Appellee's arguments lead to the same disappointing conclusion that merely mimes the district court's decision. At best the Appellee misapplies Maine law, and at worst, intentionally colors the lens through which this Court must view applicable statutory law to support its contention.

Appellant will not use this opportunity to fully restate the well-reasoned explanation and analysis from its appellate brief for naming the Heirs of the Estate of Frederick Keniston. However, pertinent to this reply is the footprint necessary for this Court's determination, namely 18-C M.R.S. §3-108, 18-C M.R.S. §3-101 and *MTGLQ Investors, LP v. Alley*, all of which the Appellee fails to fully recognize, or address.

## **II. Reply Statement**

- 1. Plaintiff, in naming as Defendants the Heirs of the Estate of Frederick L. Keniston, did Act in Accordance with Maine Probate Code 18-C M.R.S. §3-108 and 18-C M.R.S. §3-101 and therefore did comply with the directives outlined in MTGLQ Investors, L.P. v. Shelley Alley**

Appellee's brief informs this Court that "the very purpose of probate is to "promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successor." App. Br. at Page 5 (quoting 18-C M.R.S. §1-102(c)). The presumption from Appellee is that the probate process is designed to provide a streamlined course to address certain matters and those assets held by the decedent. Further, in drawing upon the context of foreclosure, Appellee postures that *Alley* stands for the proposition that "the debtor is unequivocally a required party to the foreclosure" and that "the presumed required party would be the estate." Id. at Page 4. Appellant, with the exception as to whom the required party would be, agrees with Appellee's statements. However, Appellee then further argues that the Plaintiff, at trial, failed to avail itself to the existing probate remedies to so name all needed and necessary parties, pursuant to M.R. Civ. P 19(a). In naming the estate heirs as a party, Appellee claims that "the heirs could not possibly replace the debtor as the required party needed . . . "to fully and fairly decide the

contractual dispute on which *the creditor's entitlement to reach and sell the property depends.*” Id. at Page 5 (emphasis added). It is here where Appellee’s argument becomes brittle and frail.

Appellant’s brief has thoroughly discussed the preclusive effect 18-C M.R.S. §3-108(1) has in this matter. Appellee characterizes Plaintiff’s failure to open probate and move for an appointment under this section as neglectful, having missed the 3-year window to do so, and it is of no small consequence why Appellee fails to fully inform this Court of the attendant circumstances. Nevertheless, this is simply irrelevant because the issue before the court concerns a question of law and not of adjudicated fact. Our question of law is clearly answered by Maine’s probate code and further addressed in the *Alley* analysis and decision.

It is agreed that a function of probate is to promote a speedy and efficient system for liquidating the estate of the decedent. That system of probate, found within 18-C M.R.S. §3-101, speaks squarely to our present situation. Appellee fails to acknowledge that:

“upon the death of a person, the person’s real and personal property devolves to the persons to whom it is devised . . . or to those indicated as substitutes for them in cases involving lapse . . . or other circumstances . . . or, in the absence of testamentary disposition, *to the person’s heirs* . . . Id. (emphasis added).

Our decedent's real and personal interests are assumed by his heirs<sup>1</sup>. Their inclusion in this foreclosure, properly included according to §3-101, is one of nominal position, named as a functionary only to address and answer Plaintiff's claims against the decedent, but not as a financial obligor. Their authority is not unbridled, and they operate as a fiduciary who must treat property "in trust . . . *for the benefit of the creditors* and others interested in the estate." *Clark v. Clark*, 219 A.3d 1020 at 1024, 2019 ME 158, ¶ 10 (emphasis added). As Appellant laid out in its brief, the mortgagee retains an interest in the "'right of payment" in the form of its right to the proceeds from the [foreclosure] sale of the debtor's property" and it is this mortgage interest that "corresponds to an "enforceable obligation" of the [decedent] debtor." See *Johnson v. Home State Bank*, 501 U.S. 78 at 84 (1991). The need and necessity to name the decedent's heirs, as required under Rule 19, provides the Plaintiff the opportunity at trial to establish an amount due on the loan and thereafter to recognize at sale the mortgage debt, *vis-a-vie*, proceeds from the sale of the property; it is here where we fully recognize the propriety of naming the heirs, so that the creditor's entitlement to reach and sell the property is assured.

Appellee lacks an appreciation that there is no financial recourse as to any

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<sup>1</sup> Under the Code's definition, interested persons include "heirs, devisees, children, spouses, domestic partners, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent." 18-A M.R.S. §1-201(20).

heir. Further, Appellee does not recognize *Alley's* proposition that the “debtor”, as an included and required party, is satisfied through the named heirs, with the surviving “debt interest” preserved solely for the mortgagee to realize at the public foreclosure sale. These issues-critical to the outcome of this appeal-have been summarily dismissed by Appellee.

### **III. Conclusion**

The district court, as well as the Appellee, opine that the Estate is a necessary but missing party, needed to fully administer and decide this foreclosure. However, such a position is cloaked under a veil of existential thought. There is no discussion, either judicial or from counsel, as how a foreclosure Plaintiff is to serve the so-called “Estate” with no individual to accept personal service. Here, there be dragons.

As previously stated, this Court should determine that the Plaintiff correctly and properly named the Heirs of the Estate of Frederick L. Keniston as defendants. Further, in doing so it was in accordance with well-settled and applicable probate statutes and drawn upon good standing case law. The foreclosure action should be remanded to the district court with specific direction to reinstate the matter to the docket, review all trial evidence to determine whether Plaintiff carried its burden by a preponderance, and whether a judgment of foreclosure is to issue. Short of that result, judicial guidance is needed for Appellant to understand how service could be

completed on a named “Estate” defendant, if not by way of the heirs of the Estate, for purposes of this case and the many cases similarly postured within Maine’s trial courts.

Dated: January 6, 2023

KeyBank National Association

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## **CERTIFICATE OF SERVICE**

I John Michael Ney, Jr., Esq., certify that on the date indicated below, I have sent two copies of the Appellant's Reply Brief to each of the parties listed below by United States Mail, first-class, postage prepaid, addressed as listed below:

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